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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: **EX PARTE PRESENTATION**
CC Docket No. 96-45
Federal-State Joint Board on Universal Service
TracFone Wireless Petition for Forbearance

Dear Ms. Dortch:

On behalf of our client, TracFone Wireless, Inc. ("TracFone"), this letter is submitted in response to the ex parte presentation filed by the United States Telecom Association ("USTelecom") August 26, 2005 in the above-captioned proceeding.

Underlying both of USTelecom's recent ex parte letters in opposition to TracFone's petition for forbearance and related petitions for designation as an Eligible Telecommunications Carrier (ETC) in several states is a recurring theme: that only incumbent wireline local exchange carriers should be entitled to designation as ETCs and to receive funds from the Universal Service Fund – not wireless providers; not resale carriers; not prepaid service providers, and certainly not any provider who proposes to offer service in ways which differ from the traditional service arrangements of incumbent carriers. In short, USTelecom's position on the Universal Service Fund seems to be that all providers of interstate telecommunications services should contribute to the fund (as required by Section 254 of the Communications Act), but that only its ILEC members should be permitted to use the fund's proceeds to offer services, notwithstanding the fact that Section 214(e)(2) of the Act specifically contemplates that there be multiple ETCs operating within the same service areas.

Much of USTelecom's August 26 letter restates assertions contained in its August 17, 2005 ex parte letter. Those assertions were addressed in TracFone's August 22 response and will not be reiterated here. Several statements contained in USTelecom's latest ex parte letter do warrant further response.

USTelecom's primary objection to TracFone's forbearance petition is that TracFone has not supported its claim that grant of its petition will increase Lifeline penetration. The fact that USTelecom has the audacity even to raise that objection should motivate the Commission to invoke the "clean hands" doctrine of equity jurisprudence. While USTelecom accuses TracFone of not proving that grant of its petition will increase Lifeline penetration, USTelecom continues to ignore the fact that existing ETCs, many of whom are USTelecom members, have failed miserably in implementing Lifeline programs. According to Commission data, only 33.7 percent of Lifeline-eligible households participate in Lifeline. Stated another way, existing ETCs have failed to reach 66.3 percent of the population that qualifies for Lifeline assistance. In several of the states where TracFone has sought ETC designation, the incumbent ETCs' performance has been even worse. In Alabama, 91.5 percent of Lifeline-eligible households do not participate; in Virginia, 93.4 percent do not participate; in Tennessee, 93.6 percent do not participate (source: In the Matter of Lifeline and Link-Up (*Report and Order*), 19 FCC Rcd 8302 (2004) at Table 1.A). This failure of incumbent ETCs to effectively market Lifeline services to eligible consumers is especially disturbing in light of recent increases in the nation's poverty level. According to the U.S. Census Bureau, the national poverty rate rose to 12.7 percent of the population last year, with more than 37 million people living in poverty – a 1.1 million person increase above the prior year. (source: "U.S. Poverty Rate Rises to 12.7 Percent," New York Times, August 30, 2005 (www.nytimes.com/aponline/national/AP-Census-Poverty.html)).

TracFone does not wish to belabor what incumbent ETCs have done or have not done to increase Lifeline penetration. Rather, it believes that the Commission is more interested in what TracFone will do. In this regard, the Commission's attention is directed to TracFone's Ex Parte Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier, filed July 15, 2005. At p. 5 of that filing, there is a section captioned "Marketing and Outreach Efforts" where TracFone describes its plans for marketing its Lifeline programs to increase penetration. Beyond those plans, there are other reasons why TracFone expects that its Lifeline offerings will increase penetration. First, TracFone proposes to offer a mobile service to Lifeline-eligible consumers Since it is generally recognized that lower income persons are more likely to be transient and to have no permanent fixed address than are other segments of the population, it is likely that such persons will find the mobility of TracFone's wireless Lifeline service to be a usable means of telecommunications service. Perhaps more importantly, it is well-documented that lower income persons are less likely to have established credit than middle and upper income persons. For example, the Commission's attention is directed to an August 2004 article published by the Michigan Poverty Law Program entitled "Financial and Insurance Services Commissioner Proposes Rules to Reduce Insurance Base Rates and to Ban the Use of Credit Scoring" (www.mplp.org/materials/Newsletter/04Summer/consumer2.htm). That article cites to a National Consumer Law Center report that found that low-income and minority consumers are more likely to lack the credit history necessary to generate a credit score, and, more specifically, African Americans and Latinos are more likely to have lower credit scores than whites. (As TracFone noted in its July 15, 2005 ex parte filing at page 8, n. 6, lower income African Americans and Hispanics have telephone penetration rates substantially below other portions of the population). A recent report issued by the Urban Institute concludes that the 1.5 million consumer bankruptcies per year suggest that too much debt limits the net worth of low-income families (see Robert L. Lerman, "Are Low-Income Households Accumulating Assets and Avoiding Unhealthy Debt?, A Review of Recent Evidence," published by the Urban Institute Opportunity and Ownership Project, May 2005).

TracFone's Lifeline programs, unlike those of other telecommunications carriers, will be entirely prepaid. There will be no credit checks, no mandatory security deposits, and no contractual obligations which make traditional telephone service unavailable to many Lifeline-eligible households, even with Universal Service Fund support. Because TracFone's non-credit-based Lifeline offerings will make it possible for consumers with no credit or even with bad credit to acquire affordable telecommunications service, it is highly probable that designating TracFone as an ETC will increase Lifeline penetration – the most important public interest benefit of its Lifeline proposal.

As with its previous letter, USTelecom suggests the possibility of waste, fraud and abuse. USTelecom is correct that there have been incidences of waste, fraud and abuse with existing Universal Service Fund programs. However, there is no reason to believe that TracFone's Lifeline programs will be any more susceptible to waste, fraud or abuse than those programs. Neither is the speculative possibility that such abuse could occur a reason to defer favorable action on TracFone's forbearance petition and its pending petitions for ETC designation. The Commission has promulgated Lifeline eligibility rules as well as rules which require ETCs to certify customers' Lifeline eligibility and to verify continuing eligibility (see 47 C.F.R. § 54.410). As an ETC, TracFone will be subject to those requirements. Indeed, TracFone already has described to the Commission its plans for complying with those requirements (see TracFone's Plans for Compliance with the Lifeline Certification and Verification Requirements Codified at Section 54.410 of the Commission's Rules, filed July 13, 2005). In the event that fraud, waste or abuse were to occur, the Commission has ample power to enforce its requirements and to take appropriate action against wrongdoers, including ETCs, vendors, or customers who violate those requirements. Strict enforcement of those rules, not denial of petitions for forbearance and for ETC designation, is the appropriate way to prevent waste, fraud and abuse, and to rectify it should it occur.

USTelecom bases its unsupported "waste, fraud, and abuse" concern on the fact that TracFone does not maintain a network that is "physically connected with its customers' houses." That is correct. However, it is equally correct for every wireless provider, including every wireless provider designated as an ETC. Wireless networks do not connect houses; wireless networks connect people. Whether or not there should be wireless ETCs (a question already resolved by the Commission through its designation of numerous wireless ETCs) is a very different question from whether resale carriers may be designated as ETCs – the only question raised by TracFone's forbearance petition.

USTelecom has listed several objections to specific aspects of TracFone's Lifeline proposal, none of which warrant denial of the forbearance petition or the ETC petitions. For example, USTelecom complains that there will not be unlimited ability to receive calls and that this is important for consumers who need to be reachable about employment opportunities. Of course, existing wireline ETCs' Lifeline plans do not provide consumers with any ability to receive calls while away from home. Similarly, consumers of wireline Lifeline services could not receive calls regarding potential employment when they are i) taking their children to or from school; ii) pursuing other employment opportunities; iii) traveling; or iv) engaged in any other endeavor away from their home.

USTelecom mischaracterizes TracFone's Pay-As-You-Go plan and suggests that consumers would not get the full benefit of the Lifeline support. This is incorrect. In this regard, the Commission is referred to page 3 of TracFone's July 15 ex parte letter where that plan is described. Lifeline customers participating in that plan will receive a subsidy of $129.99 per year. That is the annual fee for the plan – a fee which will not be paid by Lifeline-eligible consumers, but which will be paid out of the USF support received by TracFone. In a similar vein, USTelecom criticizes Option 2 of the NET10 Lifeline plan, asserting that "consumers notoriously fail to redeem coupons . . . ." That plan has been proposed by TracFone for those Lifeline-eligible customers who may prefer to utilize their monthly Lifeline subsidy by making discounted purchases through use of the coupons.

The point here is not to debate whether TracFone's Lifeline plans are better for consumers or worse than traditional arrangements offered by incumbent ETCs. The marketplace – not USTelecom, not TracFone, and not the Commission – will make those determinations. Rather, the point underlying TracFone's ETC proposal is that there are alternative ways to make affordable, USF-supported, telecommunications service available to low income consumers. TracFone believes that its plans offer significant consumer benefits, and that they will be successful. If TracFone is wrong, consumers will not choose those plans, in which case, TracFone will receive no USF support.

Finally, USTelecom has raised the possibility of customers using their service immediately, prior to confirmation of the eligibility for Lifeline. That is not a legitimate concern. Although a TracFone customer may begin to use TracFone service immediately upon activation of the TracFone handset, the customer will not become entitled to receive USF-supported Lifeline discounted offerings until the customer's Lifeline eligibility has been confirmed in accordance with the applicable Commission and state rules.

Notwithstanding the assertions contained in USTelecom's ex parte letters, there is no single "correct" way to offer USF-supported Lifeline services. The low participation rates achieved by current ETCs to date strongly suggest that alternative approaches should be given a chance. In petitioning the Commission for forbearance and for ETC designation, TracFone believes that it has developed ways to offer Lifeline services which will benefit eligible consumers. For that reason, TracFone respectfully requests prompt approval of its forbearance petition and expeditious grant of its ETC petitions so that it can commence offering its Lifeline programs at the earliest possible time.

Respectfully submitted,

Mitchell F. Brecher

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